

WILMA HARTLEY

IBLA 80-460

Decided May 29, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, declining to record mining claim C MC 153780.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment --
Mining Claims: Recordation

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office prior to Oct. 22, 1979. A copy of the location certificate, which is not an exact replica or machine copy of the recorded certificate, but which contains the same language and is filed timely will be accepted as complying with the laws and regulations.

APPEARANCES: Michael E. Wallace, Esq., Durango, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Wilma Hartley appeals from a decision dated February 1, 1980, by the Colorado State Office, Bureau of Land Management (BLM), declining

to record her unpatented mining claim, The Gold Belt No. 1, C MC 153780. The decision stated that appellant, whose claim was located in June of 1915, had not complied with section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), and 43 CFR 3833, in that she had filed by October 22, 1979, neither a certificate of location nor evidence of assessment work or intention to hold the claim.

Appellant belatedly submitted the required materials to BLM, contending on appeal that there was substantial compliance with the regulations.

[1] One of the pertinent regulations, 43 CFR 3833.1-2(a), provides the relevant part:

The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed.

43 CFR 3833.2-1(a) provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

In the event a mining claimant fails to comply with the recordation requirements, the regulations further provide:

§ 3833.4 Failure to file.

(a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void. [Emphasis supplied.]

[1] Appellant's certificate of location and affidavit of assessment work were received by BLM on February 25, 1980, and were therefore properly rejected as untimely filed. The mining recordation

regulations are mandatory and failure to comply therewith must result in finding that the claim has been abandoned and is void. Walter T. Paul, 43 IBLA 119 (1979); Dale C. Delor, 40 IBLA 88 (1979); Roy W. Byram, 39 IBLA 32 (1979); R. Wade Holder, 35 IBLA 169 (1978). However, on October 19, 1979, appellant had filed a typewritten copy of the recorded location certificate, which copy is not a machine or replica copy, and a notice of intention to hold. Under proposed rule making 43 FR 15102 (Apr. 10, 1978) the Department stated:

Section 314 of the Federal Land Policy and Management Act requires that a copy of the official record of the location notice or certificate be filed with the Bureau of Land Management. In order to make clear what an official copy is, we have completely revised the definition of that term. The revised definition is meant to accommodate any filing which is functional for Bureau of Land Management purposes and has been or will be recorded in the county or other local jurisdiction.

In 44 FR 9720 (Feb. 14, 1979), the Department, in revising its definitions, stated:

Comments were offered on the amendment to the definition of "copy of the official record of the notice or certificate of location". One comment requested that the document filed with the Bureau of Land Management be the document filed with the local recording agency for the claim. This provision was included in the proposed amendment because experience indicates that there is not sufficient time in most jurisdictions to record with the local agency, get a certified copy of the recorded instrument and file it with the Bureau of Land Management. The suggested change would only complicate the problem that the amendment was designed to relieve.

A second comment wanted the amendment changed to make it clear that an acceptable document was not only one that had been filed but one that will be filed. This change is in keeping with the intent of the amendments in the proposed rulemaking and it was adopted.

Two changes that were made after a careful study of the amendment were the addition of the word "legible" in two places and the phrase, "name or other pertinent fact" in one place. The word "legible" was inserted to make it clear that the copy of the document filed must be legible or it is useless as a document of recordation. The experience of the Bureau of Land Management has been that some of the documents filed have been useless because they could not be read. The phrase, "name or other pertinent fact" was inserted in the last sentence of the definition

to further clarify the circumstances when an amendment needs to be filed with the Bureau of Land Management. Finally, the typosgraphical error in the second line of the amendment was corrected by substituting the word "or" for "of".

43 CFR 3833.0-3(i), at 44 FR 9722 was amended to read:

(i) "Copy of the official record of the notice of certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

* * * * *

It is obvious from the foregoing that a machine copy of the recorded location certificate is not a sine qua non, and the documents filed October 19, 1979, together with the requisite filing fee of \$5, satisfied applicable requirements.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

